

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. After reviewing the record compiled to date and considering the parties' arguments, the Appeals Board finds that the Order should be affirmed.

2. On January 11, 2000, claimant was diagnosed with multiple ventral hernias and a small bowel obstruction. The next day, Dr. Randall R. Beech performed abdominal surgery. While recuperating from the first surgery, in March 2000 Dr. Beech performed a second abdominal surgery. The only medical expert opinion in evidence is from Dr. Beech, who attributes the surgeries to claimant's work for respondent. In an April 18, 2000 letter to claimant's attorney, the doctor wrote, in part:

For clarification, I would like to make the statement that based on a reasonable degree of medical probability, her [claimant's] employment and requirements of her employment which included lifting and straining because of the weights required in lifting in this area have definitely contributed to her hernia formation and subsequent need for follow[-]up surgery to repair these areas.

The Appeals Board finds and concludes that claimant sustained personal injury by accident arising out of and in the course of employment with respondent. The Appeals Board concludes that claimant sustained a series of accidents through her last day of work with respondent on January 10, 2000.

3. On both January 17, 2000, and January 21, 2000, claimant notified respondent that her abdominal injuries were work-related and that she wanted to file a claim for workers compensation benefits. Notice on either of those dates is timely as both are within 10 days,¹ when Saturdays and Sundays are excluded,² of claimant's last day of work, which is deemed the date of accident for this alleged series of accidents.

The Appeals Board affirms the Judge's finding and conclusion that claimant provided respondent with timely notice of the accidental injury.

4. The argument that claimant failed to prove that the March 2000 surgery was not related to claimant's work-related injury is not reviewable on this appeal. Because this is an appeal from a preliminary hearing order, not every alleged error in law or fact is subject to review. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following:

¹ See K.S.A. 44-520.

² *McIntyre v. A.L. Abercrombie, Inc.*, 23 Kan. App. 2d 204, 929 P.2d 1386 (1996).

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide timely notice and timely written claim?
- (4) Is there any defense to the compensability of the claim?³

Additionally, the Board may also review those preliminary hearing orders in which the Judge exceeds his or her jurisdiction.⁴

5. The Judge had the jurisdiction at the preliminary hearing to determine whether the March 2000 surgery was related to claimant's work-related injury. Because the Judge did not exceed his jurisdiction in deciding that issue and because the issue is not one of those listed above, it is not reviewable at this juncture of the proceeding.

6. As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing of the claim.⁵

WHEREFORE, the Appeals Board affirms the April 25, 2000 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

c: James S. Oswalt, Hutchinson, KS
Jeffrey A. Chanay, Topeka, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 1999 Supp. 44-534a(a)(2).

⁴ K.S.A. 1999 Supp. 44-551(b)(2)(A).

⁵ K.S.A. 1999 Supp. 44-534a(a)(2).